

By: Janek

S.B. No. 15

A BILL TO BE ENTITLED

AN ACT

relating to civil claims involving exposure to asbestos and silica.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. FINDINGS; PURPOSE. (a) The Legislature of the State of Texas makes findings as stated in this section.

(b) Asbestos is a mineral that was used extensively in industrial applications, especially between the 1940s and the 1970s. It is estimated that as many as 27 million American workers were exposed to asbestos between 1940 and 1979. Exposure to asbestos, particularly through inhalation of asbestos fibers, has allegedly been linked to certain malignant and nonmalignant diseases, including mesothelioma and asbestosis. These diseases have latency periods of up to 40 years.

(c) Over the last three decades, hundreds of thousands of lawsuits alleging asbestos-related disease have been filed throughout the United States. In the early 1990s, between 15,000 and 20,000 new lawsuits alleging asbestos-related disease were filed each year. By the late 1990s, the number of new lawsuits alleging asbestos-related disease filed each year was more than double the number of yearly filings seen in the early 1990s. By one estimate, the number of asbestos lawsuits pending in state and federal courts in the United States doubled in the 1990s, from approximately 100,000 to more than 200,000 claims.

(d) In 1991, the Judicial Conference Ad Hoc Committee on

1 Asbestos Litigation, appointed by United States Supreme Court Chief  
2 Justice William Rehnquist, found that "the [asbestos litigation]  
3 situation has reached critical dimensions and is getting worse."  
4 In 1997, the United States Supreme Court acknowledged that the  
5 country is in the midst of an "asbestos-litigation crisis." *AmChem*  
6 *Products, Inc. v. Windsor*, 521 U.S. 591, 597 (1997).

7 (e) Texas has not been spared this crisis. Since 1988, more  
8 lawsuits alleging asbestos-related disease have been filed in Texas  
9 than in any other state. Thousands of asbestos lawsuits are pending  
10 in Texas courts today.

11 (f) This asbestos litigation crisis is due, in part, to  
12 for-profit litigation screening of persons with possible  
13 occupational exposure to asbestos and to the existence of statutes  
14 of limitations that begin to run based merely on knowledge of a  
15 possible asbestos-related disease or symptom. The for-profit  
16 screening process identifies individuals with radiographically  
17 detectable markings on their lungs that are consistent with  
18 asbestos-related disease regardless of whether the individuals  
19 have any physical impairment. The identified individuals then file  
20 lawsuits, in part to avoid the running of limitations triggered by  
21 the discovery that they may have an asbestos-related injury. Many  
22 of the identified individuals (estimated to be as many as 90 percent  
23 of recently identified individuals) are not experiencing any  
24 symptoms of asbestos-related disease and are not suffering from any  
25 asbestos-related illness affecting their daily functions.

26 (g) The crush of asbestos litigation has been costly to  
27 employers, employees, litigants, and the court system. In 2003,

1 the American Bar Association Commission on Asbestos Litigation  
2 noted that in 1982, the nation's single largest supplier of  
3 asbestos-containing insulation products, the Johns-Manville  
4 Corporation, "declared bankruptcy due to the burden of the asbestos  
5 litigation." Since then, more than 70 other companies have  
6 declared bankruptcy due to the burden of asbestos litigation. It is  
7 estimated that between 60,000 and 128,000 American workers already  
8 have lost their jobs as a result of asbestos-related bankruptcies  
9 and that eventually 432,000 jobs will be lost due to  
10 asbestos-related bankruptcies. Each worker who loses a job due to  
11 an asbestos-related bankruptcy loses between \$25,000 and \$50,000 in  
12 wages over the worker's career. These workers also have seen the  
13 value of their 401(k) retirement plans drop by 25 percent or more  
14 due to these bankruptcies.

15 (h) Additionally, it is estimated that asbestos litigation  
16 has already cost over \$54 billion, with well over half of this  
17 expense going to attorney's fees and other litigation costs. The  
18 crowded dockets that result from the crush of asbestos cases filed  
19 by persons who are not functionally or physically impaired by any  
20 asbestos-related illness prevent seriously ill claimants from  
21 having their day in court, while those who have had their day in  
22 court often find that the value of their recovery is seriously  
23 reduced when the company against whom the judgment was rendered  
24 files bankruptcy.

25 (i) Silica is a naturally occurring mineral and is the  
26 second most common constituent of the earth's crust. Crystalline  
27 silica is present in sand, quartz, and granite.

1           (j) Silica-related illness, including silicosis, can occur  
2 when silica is inhaled. To be inhaled, the silica particles must be  
3 sufficiently small to be respirable. These tiny particles are  
4 created when sand is pulverized in the sandblasting process and may  
5 be found in the fine silica flour used in various foundry processes.

6           (k) Silicosis was recognized as an occupational disease  
7 many years ago. In fact, the American Foundry Society has  
8 distributed literature to its members warning of the dangers of  
9 silica exposure for more than 70 years. By the 1930s, the federal  
10 government had launched a silica awareness campaign which led to  
11 greater protection for workers exposed to silica dust. As a result,  
12 the number of silica lawsuits filed each year was relatively  
13 predictable. This trend has changed. The number of new lawsuits  
14 alleging silica-related disease being filed each year has begun to  
15 rise precipitously in recent years. For example, one of America's  
16 largest suppliers of industrial sand had more than 15,000 new  
17 claims filed in the first six months of 2003, which is three times  
18 the number of claims it had in all of 2002 and more than 10 times the  
19 number of claims it had in all of 2001.

20           (l) Silica claims, like asbestos claims, often arise when an  
21 individual is identified as having markings on the individual's  
22 lungs that are possibly consistent with silica exposure, but the  
23 individual has no functional or physical impairment from any  
24 silica-related disease. Recent studies indicate that these  
25 individuals are being identified through the efforts of lawyers who  
26 are compensated by generating contingency fees, just as with  
27 asbestos litigation. The identified individuals, like those

1 alleging asbestos-related injury, file lawsuits under the belief  
2 that they must do so to avoid having their claims barred by  
3 limitations even though they have no current impairment and may  
4 never have any impairment. It is, therefore, necessary to address  
5 silica-related litigation in order to avoid an asbestos-like  
6 litigation crisis in Texas.

7 (m) It is the purpose of this Act to protect the right of  
8 people with asbestos-related and silica-related impairments and  
9 injuries to obtain compensation in a fair and efficient manner  
10 through the Texas court system, while at the same time preventing  
11 scarce judicial and litigant resources from being misdirected by  
12 the premature claims of individuals who have been exposed to  
13 asbestos or silica but have no functional or physical impairment  
14 from asbestos-related or silica-related disease. To that end, this  
15 Act:

16 (1) adopts medically accepted standards for  
17 differentiating between individuals with nonmalignant  
18 asbestos-related or silica-related disease causing functional  
19 impairment and individuals with no functional impairment or whose  
20 impairment is caused solely by some other cause, such as asthma,  
21 emphysema, or smoking;

22 (2) provides a method to obtain the dismissal of  
23 lawsuits in which the exposed person has no functional impairment,  
24 while at the same time protecting a person's right to bring suit on  
25 discovering an asbestos-related or silica-related impairment or  
26 injury; and

27 (3) creates an extended period before limitations

begin to run in which to bring claims for nonmalignant injuries caused by inhalation or ingestion of asbestos or by the inhalation of silica to preserve the right of those who have been exposed to asbestos or silica but are not yet impaired to bring a claim later in the event that they develop an asbestos-related or silica-related disease or injury.

SECTION 2. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 90 to read as follows:

CHAPTER 90. CLAIMS INVOLVING ASBESTOS AND SILICA

Sec. 90.001. DEFINITIONS. In this chapter:

(1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

(2) "Asbestos-related injury" means personal injury or death allegedly caused, in whole or in part, by inhalation or ingestion of asbestos.

(3) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(4) "Certified B-reader" means a person who has successfully completed the x-ray interpretation course sponsored by the National Institute for Occupational Safety and Health (NIOSH) and passed the B-reader certification examination for x-ray interpretation and whose NIOSH certification is current at the time of any readings required by this chapter.

(5) "Chest x-ray" means chest films that are taken in accordance with all applicable state and federal regulatory

standards and in the posterior-anterior view.

(6) "Claimant" means an exposed person and any person who is seeking recovery of damages for or arising from the injury or death of an exposed person.

(7) "Defendant" means a person against whom a claim arising from an asbestos-related injury or a silica-related injury is made.

(8) "Exposed person" means a person who is alleged to have suffered an asbestos-related injury or a silica-related injury.

(9) "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(10) "FVC" means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(11) "ILO system of classification" means the radiological rating system of the International Labor Office in "Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses" (2000), as amended.

(12) "Mesothelioma" means a rare form of cancer allegedly caused in some instances by exposure to asbestos in which the cancer invades cells in the membrane lining:

(A) the lungs and chest cavity (the pleural region);

(B) the abdominal cavity (the peritoneal region); or

1                   (C) the heart (the pericardial region).

2                   (13) "Nonmalignant asbestos-related injury" means an  
3 asbestos-related injury other than mesothelioma or some other form  
4 of cancer.

5                   (14) "Nonmalignant silica-related injury" means a  
6 silica-related injury other than cancer.

7                   (15) "Physician board certified in internal medicine"  
8 means a physician who is certified by the American Board of Internal  
9 Medicine or the American Osteopathic Board of Internal Medicine.

10                   (16) "Physician board certified in occupational  
11 medicine" means a physician who is certified in the subspecialty of  
12 occupational medicine by the American Board of Preventive Medicine  
13 or the American Osteopathic Board of Preventive Medicine.

14                   (17) "Physician board certified in oncology" means a  
15 physician who is certified in the subspecialty of medical oncology  
16 by the American Board of Internal Medicine or the American  
17 Osteopathic Board of Internal Medicine.

18                   (18) "Physician board certified in pathology" means a  
19 physician who holds primary certification in anatomic pathology or  
20 clinical pathology from the American Board of Pathology or the  
21 American Osteopathic Board of Internal Medicine and whose  
22 professional practice:

23                   (A) is principally in the field of pathology; and

24                   (B) involves regular evaluation of pathology  
25 materials obtained from surgical or postmortem specimens.

26                   (19) "Physician board certified in pulmonary  
27 medicine" means a physician who is certified in the subspecialty of



1 pulmonary medicine by the American Board of Internal Medicine or  
2 the American Osteopathic Board of Internal Medicine.

3 (20) "Plethysmography" means the test for determining  
4 lung volume, also known as "body plethysmography," in which the  
5 subject of the test is enclosed in a chamber that is equipped to  
6 measure pressure, flow, or volume change.

7 (21) "Pulmonary function testing" means spirometry  
8 and lung volume testing performed in accordance with Section 90.002  
9 using equipment, methods of calibration, and techniques that meet:

10 (A) the criteria incorporated in the American  
11 Medical Association Guides to the Evaluation of Permanent  
12 Impairment (5th ed. 2000) and reported in 20 C.F.R. Part 404,  
13 Subpart P, Appendix 1, Part (A), Sections 3.00(E) and (F)(2003);  
14 and

15 (B) the interpretative standards in the Official  
16 Statement of the American Thoracic Society entitled "Lung Function  
17 Testing: Selection of Reference Values and Interpretative  
18 Strategies," as published in 144 American Review of Respiratory  
19 Disease 1202-1218 (1991).

20 (22) "Report" means a report required by Section  
21 90.003 or 90.004.

22 (23) "Serve" means to serve notice on a party in  
23 compliance with Rule 21a, Texas Rules of Civil Procedure.

24 (24) "Silica" means a respirable form of silicon  
25 dioxide, including alpha quartz, cristobalite, and tridymite.

26 (25) "Silica-related injury" means personal injury or  
27 death allegedly caused, in whole or in part, by inhalation of

1 silica.

2 (26) "Silicosis" means interstitial fibrosis of the  
3 lungs caused by inhalation of silica.

4 Sec. 90.002. PULMONARY FUNCTION TESTING. Pulmonary  
5 function testing required by this chapter must be performed under  
6 the supervision of and interpreted by a physician:

7 (1) who is licensed in this state or another state of  
8 the United States;

9 (2) who is board certified in pulmonary medicine; and

10 (3) whose license and certification were not on  
11 inactive status at the time the testing was performed.

12 Sec. 90.003. REPORTS REQUIRED FOR CLAIMS INVOLVING  
13 ASBESTOS-RELATED INJURY. (a) A claimant asserting an  
14 asbestos-related injury must serve on each party the following  
15 information:

16 (1) a report by a physician who is board certified in  
17 pulmonary medicine, internal medicine, oncology, or pathology and  
18 whose license and certification were not on inactive status at the  
19 time the report was made stating that:

20 (A) the exposed person has been diagnosed with  
21 mesothelioma or some other form of cancer; and

22 (B) to a reasonable degree of medical  
23 probability, exposure to asbestos was a cause of the diagnosed  
24 mesothelioma or other form of cancer in the exposed person; or

25 (2) a report by a physician who is board certified in  
26 pulmonary medicine, internal medicine, or occupational medicine  
27 and whose license and certification were not on inactive status at

1 the time the report was made that:

2 (A) verifies that the physician or a medical  
3 professional employed by and under the direct supervision and  
4 control of the physician:

5 (i) performed a physical examination of the  
6 exposed person, or if the exposed person is deceased, reviewed  
7 available records relating to the exposed person's medical  
8 condition;

9 (ii) took a detailed occupational and  
10 exposure history from the exposed person or, if the exposed person  
11 is deceased, from the person most knowledgeable about the alleged  
12 exposure or exposures that form the basis of the action; and

13 (iii) took a detailed medical and smoking  
14 history that includes a thorough review of the exposed person's  
15 past and present medical problems and their most probable cause;

16 (B) sets out the details of the exposed person's  
17 occupational, medical, and smoking history and verifies that at  
18 least 10 years have elapsed between the exposed person's first  
19 exposure to asbestos and the date of diagnosis;

20 (C) verifies that the exposed person has:

21 (i) a quality 1 chest x-ray that has been  
22 read by a certified B-reader according to the ILO system of  
23 classification, except that in a death case where no pathology is  
24 available, the necessary radiologic findings may be made with a  
25 quality 2 film if a quality 1 film is not available, as showing  
26 bilateral small irregular opacities (s, t, or u) graded 1/1 or  
27 higher or bilateral diffuse pleural thickening graded B2 or higher

1 including blunting of the costophrenic angle; or

2 (ii) pathological asbestosis graded 1(B) or  
3 higher under the criteria published in "Asbestos-Associated  
4 Diseases," 106 Archives of Pathology and Laboratory Medicine 11,  
5 Appendix 3 (October 8, 1982);

6 (D) verifies that the exposed person has  
7 asbestos-related pulmonary impairment as demonstrated by pulmonary  
8 function testing showing:

9 (i) forced vital capacity below the lower  
10 limit of normal and FEV1/FVC ratio (using actual values) at or above  
11 the lower limit of normal; or

12 (ii) total lung capacity, by  
13 plethysmography or timed gas dilution, below the lower limit of  
14 normal;

15 (E) verifies that the physician has concluded  
16 that the exposed person's medical findings and impairment were not  
17 more probably the result of causes other than asbestos exposure  
18 revealed by the exposed person's employment and medical history;  
19 and

20 (F) is accompanied by copies of all B-reading,  
21 pulmonary function tests (including printouts of all data, flow  
22 volume loops, and other information required to demonstrate  
23 compliance with the equipment, quality, interpretation, and  
24 reporting standards set out in this chapter), lung volume tests,  
25 x-ray examinations, pathology reports, or other testing reviewed by  
26 the physician in reaching the physician's conclusions.

27 (b) The detailed occupational and exposure history required

by Subsection (a)(2)(A)(ii) must include all of the principal employments and other exposures of the exposed person involving exposures to airborne contaminants. It must indicate whether each employment involved exposure to airborne contaminants, including asbestos fibers and other disease-causing dusts, that can cause pulmonary impairment and the nature, duration, and level of such exposure.

(c) If the pulmonary function test results do not meet the requirements of Subsection (a)(2)(D)(i) or (ii), a claimant may serve on each party a report by a physician who is board certified in pulmonary medicine, internal medicine, or occupational medicine and whose license and certification are not on inactive status that:

(1) verifies that the physician has a physician-patient relationship with the exposed person;

(2) verifies that the exposed person has a quality 1 chest x-ray that has been read by a certified B-reader according to the ILO system of classification, except that in a death case where no pathology is available, the necessary radiologic findings may be made with a quality 2 film if a quality 1 film is not available, as showing bilateral small irregular opacities (s, t, or u) graded 2/1 or higher;

(3) verifies that the exposed person has restrictive impairment from asbestosis and includes the specific pulmonary function test findings on which the physician relies to establish that the exposed person has restrictive impairment;

(4) verifies that the physician has concluded that the

1 exposed person's medical findings and impairment were not more  
2 probably the result of causes other than asbestos exposure revealed  
3 by the exposed person's employment and medical history; and

4 (5) is accompanied by copies of all B-reading,  
5 pulmonary function tests (including printouts of all data, flow  
6 volume loops, and other information required to demonstrate  
7 compliance with the equipment, quality, interpretation, and  
8 reporting standards set out in this chapter), lung volume tests,  
9 x-ray examinations, pathology reports or other testing reviewed by  
10 the physician in reaching the physician's conclusions.

11 Sec. 90.004. REPORTS REQUIRED FOR CLAIMS INVOLVING  
12 SILICA-RELATED INJURY. (a) A claimant asserting a silica-related  
13 injury must serve on each party the following information:

14 (1) a report by a physician who is board certified in  
15 pulmonary medicine, internal medicine, oncology, or pathology and  
16 whose license and certification were not on inactive status at the  
17 time the report was made stating that:

18 (A) the exposed person has been diagnosed with  
19 silica-related lung cancer; and

20 (B) to a reasonable degree of medical  
21 probability, exposure to silica was a cause of the diagnosed lung  
22 cancer; or

23 (2) a report by a physician who is board certified in  
24 pulmonary medicine, internal medicine, pathology, or occupational  
25 medicine and whose license and certification were not on inactive  
26 status at the time the report was made that:

27 (A) verifies that the physician or a medical

1 professional employed by and under the direct supervision and  
2 control of the physician:

3 (i) performed a physical examination of the  
4 exposed person, or if the exposed person is deceased, reviewed  
5 available records relating to the exposed person's medical  
6 condition;

7 (ii) took a detailed occupational and  
8 exposure history from the exposed person or, if the exposed person  
9 is deceased, from the person most knowledgeable about the alleged  
10 exposure or exposures that form the basis of the action; and

11 (iii) took a detailed medical and smoking  
12 history that includes a thorough review of the exposed person's  
13 past and present medical problems and their most probable cause;

14 (B) sets out the details of the exposed person's  
15 occupational, medical, and smoking history, and verifies that there  
16 has been a sufficient latency period for the applicable type of  
17 silica-related disease;

18 (C) verifies that the exposed person has a Class  
19 2 or higher impairment due to silica-related disease, according to  
20 the American Medical Association Guides to the Evaluation of  
21 Permanent Impairment (5th ed. 2000) and reported as set forth in 20  
22 C.F.R. Part 404, Subpart P, Appendix 1, Part (A), Sections 3.00(E)  
23 and (F) (2003) and:

24 (i) a diagnosis of silica-related  
25 progressive massive fibrosis, acute silicoproteinosis, or  
26 silicosis complicated by documented tuberculosis;

27 (ii) a quality 1 chest x-ray that has been

1 read by a certified B-reader according to the ILO system of  
2 classification, except that in a death case where no pathology is  
3 available, the necessary radiologic findings may be made with a  
4 quality 2 film if a quality 1 film is not available, as showing  
5 bilateral nodular opacities (p, q, or r) occurring primarily in the  
6 upper lung fields, graded 1/1 or higher; or

7 (iii) pathological demonstration of  
8 classic silicotic nodules exceeding one centimeter in diameter as  
9 published in "Diseases Associated with Exposure to Silica and  
10 Nonfibrous Silica Materials," 112 Archives of Pathology and  
11 Laboratory Medicine 7 (July 1988);

12 (D) verifies that the physician has concluded  
13 that the exposed person's medical findings and impairment were not  
14 more probably the result of causes other than silica exposure  
15 revealed by the exposed person's employment and medical history;  
16 and

17 (E) is accompanied by copies of all B-reading,  
18 pulmonary function tests (including printouts of all data, flow  
19 volume loops, and other information required to demonstrate  
20 compliance with the equipment, quality, interpretation, and  
21 reporting standards set out in this chapter), lung volume tests,  
22 x-ray examinations, pathology reports, or other testing reviewed by  
23 the physician in reaching the physician's conclusions.

24 (b) The detailed occupational and exposure history required  
25 by Subsection (a)(2)(A)(ii) must include all of the principal  
26 employments and other exposures of the exposed person involving  
27 exposures to airborne contaminants. It must indicate whether each



1 employment involved exposure to airborne contaminants, including  
2 silica fibers and other disease-causing dusts, that can cause  
3 pulmonary impairment and the nature, duration, and level of such  
4 exposure. All such reports must meet objective criteria for  
5 generally accepted medical standards related to exposure to silica  
6 fibers.

7 Sec. 90.005. PROHIBITED BASIS FOR DIAGNOSIS. (a) For  
8 purposes of this chapter, a physician may not, as the basis for a  
9 diagnosis, rely on the reports or opinions of any doctor, clinic,  
10 laboratory, or testing company that performed an examination, test,  
11 or screening of the exposed person's medical condition in violation  
12 of any law, regulation, licensing requirement, or medical code of  
13 practice of the state in which the examination, test, or screening  
14 was conducted.

15 (b) If a physician relies on any information in violation of  
16 Subsection (a), the physician's opinion or report does not comply  
17 with the requirements of this chapter.

18 Sec. 90.006. SERVING REPORTS. (a) Except as provided by  
19 Subsections (b) and (c), in a case filed on or after the date this  
20 chapter becomes law, a report prescribed by Section 90.003 or  
21 90.004 must be served on each party not later than the 30th day  
22 after the date that party answers or otherwise enters an appearance  
23 in the action.

24 (b) In a case pending on the date this chapter becomes law  
25 and in which the trial, or any new trial or retrial following  
26 motion, appeal, or otherwise, commences on or before the 90th day  
27 after the date this chapter becomes law, a claimant is not required

to serve a report on any party unless a mistrial, new trial, or retrial is subsequently granted or ordered.

(c) In a case pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, commences after the 90th day after the date this chapter becomes law, a report must be served on all parties on or before the earlier of the following dates:

(1) the 60th day before trial commences; or

(2) the 180th day after the date this chapter becomes law.

Sec. 90.007. MOTION TO DISMISS. (a) If a claimant fails to timely serve a report on a defendant, or serves on the defendant a report that does not comply with the requirements of Section 90.003 or 90.004, the defendant may file a motion to dismiss the claimant's asbestos-related claims or silica-related claims, as applicable. The motion must be filed on or before the 30th day after the date the report is served on the defendant. If a claimant fails to serve a report on the defendant, the motion must be filed on or before the date the report was required to be served on the defendant under Section 90.006. If the basis of the motion is that the claimant has served on the defendant a report that does not comply with the requirements of this chapter, the motion must include the reasons why the report does not comply with this chapter.

(b) A claimant may file a response to a motion to dismiss on or before the 15th day after the date the motion to dismiss is served. A report required by Section 90.003 or 90.004 may be filed, amended, or supplemented within the time required for responding to

a motion to dismiss. The service of an amended or supplemental report does not require the filing of an additional motion to dismiss if the reasons stated in the original motion to dismiss are sufficient to require dismissal under this chapter.

(c) If the trial court is of the opinion that a motion to dismiss is meritorious, the court shall, by written order, grant the motion and dismiss all of the claimant's asbestos-related claims or silica-related claims against the defendant. A dismissal under this section is without prejudice to the claimant's right, if any, to assert claims for an asbestos-related injury or a silica-related injury in a subsequent action.

(d) On the filing of a motion to dismiss under this section, all further proceedings in the case are stayed until the motion is heard and determined by the trial court.

(e) On the motion of a party showing good cause, the trial court may shorten or extend the time limits provided in this section for filing or serving motions, responses, or reports.

Sec. 90.008. VOLUNTARY DISMISSAL. Before serving a report required by Section 90.003 or 90.004, a claimant seeking damages arising from an asbestos-related injury or silica-related injury may voluntarily dismiss the claimant's action. If a claimant files a voluntary dismissal under this section, the claimant's voluntary dismissal is without prejudice to the claimant's right to file a subsequent action seeking damages arising from an asbestos-related injury or a silica-related injury.

Sec. 90.009. JOINDER OF CLAIMANTS. Unless all parties agree otherwise, claims relating to more than one exposed person

1 may not be joined for a single trial.

2 Sec. 90.010. SUPREME COURT RULEMAKING. The supreme court  
3 may promulgate amendments to the Texas Rules of Civil Procedure  
4 regarding the joinder of claimants in asbestos-related actions or  
5 silica-related actions if the rules are consistent with Section  
6 90.009.

7 SECTION 3. Section 16.003(a), Civil Practice and Remedies  
8 Code, is amended to read as follows:

9 (a) Except as provided by Sections 16.010, 16.0031, and  
10 16.0045, a person must bring suit for trespass for injury to the  
11 estate or to the property of another, conversion of personal  
12 property, taking or detaining the personal property of another,  
13 personal injury, forcible entry and detainer, and forcible detainer  
14 not later than two years after the day the cause of action accrues.

15 SECTION 4. Subchapter A, Chapter 16, Civil Practice and  
16 Remedies Code, is amended by adding Section 16.0031 to read as  
17 follows:

18 Sec. 16.0031. ASBESTOS-RELATED OR SILICA-RELATED INJURIES.

19 (a) In an action for personal injury or death resulting from an  
20 asbestos-related injury, as defined by Section 90.001, the cause of  
21 action accrues for purposes of Section 16.003 on the earlier of the  
22 following dates:

23 (1) the date of the exposed person's death; or

24 (2) the date that the claimant serves a report  
25 complying with Section 90.003.

26 (b) In an action for personal injury or death resulting from  
27 a silica-related injury, as defined by Section 90.001, the cause of

1 action accrues for purposes of Section 16.003 on the earlier of the  
2 following dates:

- 3           (1) the date of the exposed person's death; or  
4           (2) the date that the claimant serves a report  
5 complying with Section 90.004.

6           SECTION 5. Section 51.014(a), Civil Practice and Remedies  
7 Code, is amended to read as follows:

8           (a) A person may appeal from an interlocutory order of a  
9 district court, county court at law, or county court that:

- 10           (1) appoints a receiver or trustee;  
11           (2) overrules a motion to vacate an order that  
12 appoints a receiver or trustee;  
13           (3) certifies or refuses to certify a class in a suit  
14 brought under Rule 42 of the Texas Rules of Civil Procedure;  
15           (4) grants or refuses a temporary injunction or grants  
16 or overrules a motion to dissolve a temporary injunction as  
17 provided by Chapter 65;  
18           (5) denies a motion for summary judgment that is based  
19 on an assertion of immunity by an individual who is an officer or  
20 employee of the state or a political subdivision of the state;  
21           (6) denies a motion for summary judgment that is based  
22 in whole or in part upon a claim against or defense by a member of  
23 the electronic or print media, acting in such capacity, or a person  
24 whose communication appears in or is published by the electronic or  
25 print media, arising under the free speech or free press clause of  
26 the First Amendment to the United States Constitution, or Article  
27 I, Section 8, of the Texas Constitution, or Chapter 73;

1           (7) grants or denies the special appearance of a  
2 defendant under Rule 120a, Texas Rules of Civil Procedure, except  
3 in a suit brought under the Family Code;

4           (8) grants or denies a plea to the jurisdiction by a  
5 governmental unit as that term is defined in Section 101.001;

6           (9) denies all or part of the relief sought by a motion  
7 under Section 74.351(b), except that an appeal may not be taken from  
8 an order granting an extension under Section 74.351; ~~[or]~~

9           (10) grants relief sought by a motion under Section  
10 74.351(1); or

11           (11) denies a motion to dismiss filed under Section  
12 90.007.

13           SECTION 6. Section 22.225(d), Government Code, is amended  
14 to read as follows:

15           (d) A petition for review is allowed to the supreme court  
16 for an appeal from an interlocutory order described by Section  
17 51.014(a)(3), ~~[or]~~ (6), or (11), Civil Practice and Remedies Code.

18           SECTION 7. Subchapter E, Chapter 21, Insurance Code, is  
19 amended by adding Article 21.53X to read as follows:

20           Art. 21.53X. PROHIBITED PRACTICES RELATED TO EXPOSURE TO  
21 ASBESTOS OR SILICA. (a) In this article, "health benefit plan"  
22 means a plan that provides benefits for medical, surgical, or other  
23 treatment expenses incurred as a result of a health condition, a  
24 mental health condition, an accident, sickness, or substance abuse,  
25 including an individual, group, blanket, or franchise insurance  
26 policy or insurance agreement, a group hospital service contract,  
27 or an individual or group evidence of coverage or similar coverage

1 document. The term includes:

2 (1) a small employer health benefit plan or a health  
3 benefit plan written to provide coverage with a cooperative under  
4 Chapter 26 of this code;

5 (2) a standard health benefit plan offered under  
6 Article 3.80 of this code or Section 9N, Texas Health Maintenance  
7 Organization Act (Article 20A.9N, Vernon's Texas Insurance Code);  
8 and

9 (3) a health benefit plan offered under Chapter 1551,  
10 1575, 1579, or 1601 of this code.

11 (b) This article applies to any entity that offers a health  
12 benefit plan or an annuity or life insurance policy or contract in  
13 this state, including:

14 (1) a stock or mutual life, health, or accident  
15 insurance company;

16 (2) a group hospital service corporation operating  
17 under Chapter 842 of this code;

18 (3) a fraternal benefit society operating under  
19 Chapter 885 of this code;

20 (4) a stipulated premium insurance company operating  
21 under Chapter 884 of this code;

22 (5) a Lloyd's plan operating under Chapter 941 of this  
23 code;

24 (6) an exchange operating under Chapter 942 of this  
25 code;

26 (7) a health maintenance organization operating under  
27 Chapter 843 of this code;

1           (8) a multiple employer welfare arrangement that holds  
2 a certificate of authority under Chapter 846 of this code;

3           (9) an approved nonprofit health corporation that  
4 holds a certificate of authority under Chapter 844 of this code;

5           (10) a statewide mutual assessment company operating  
6 under Chapter 881 of this code;

7           (11) a local mutual aid association operating under  
8 Chapter 886 of this code; and

9           (12) a local mutual burial association operating under  
10 Chapter 888 of this code.

11           (c) An entity that offers a health benefit plan or an  
12 annuity or life insurance policy or contract may not use the fact  
13 that a person has been exposed to asbestos fibers or silica or has  
14 filed a claim governed by Chapter 90, Civil Practice and Remedies  
15 Code, to reject, deny, limit, cancel, refuse to renew, increase the  
16 premiums for, or otherwise adversely affect the person's  
17 eligibility for or coverage under the health benefit plan.

18           SECTION 8. (a) The rules adopted by the supreme court under  
19 Subchapter H, Chapter 74, Government Code, apply to any cause of  
20 action alleging exposure to asbestos or silica or brought under  
21 Chapter 90, Civil Practice and Remedies Code, as added by this Act,  
22 that is commenced or pending on or after the effective date of this  
23 Act, and in which the trial, or any new trial or retrial following  
24 motion, appeal, or otherwise, begins on or after the effective date  
25 of this Act.

26           (b) Sections 90.009 and 16.0031, Civil Practice and  
27 Remedies Code, as added by this Act, apply to an action commenced on



1 or after the effective date of this Act or pending on the effective  
2 date of this Act and in which the trial, or any new trial or retrial  
3 following motion, appeal, or otherwise, is not in progress on or  
4 after the effective date of this Act. In an action commenced before  
5 the effective date of this Act, a trial, new trial, or retrial that  
6 is in progress on the effective date of this Act is governed by the  
7 law applicable to the action immediately before the effective date  
8 of this Act, and that law is continued in effect for that purpose.

9 (c) Except as provided by a contract entered into before the  
10 effective date of this Act, Article 21.53X, Insurance Code, as  
11 added by this Act, applies to a health benefit plan, health  
12 insurance policy, or health insurance contract delivered, issued  
13 for delivery, or renewed before, on, or after the effective date of  
14 this Act.

15 SECTION 9. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2005.